

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this ____ day of March, 2024

BETWEEN: **NEW BRUNSWICK POWER CORPORATION**,
a Crown Corporation under the laws for the Province of New Brunswick, having its head office at the City of Fredericton, New Brunswick, hereinafter referred to as “the Vendor”

- and -

THE CITY OF FREDERICTON, a local government under and by virtue of the *Local Governance Act*, SNB 2017, c.18, located at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5, hereinafter referred to as “the Purchaser”

Each a “Party” and together the “Parties”,

WHEREAS the Vendor owns and maintains an electric vehicle charging station (the “**EV Charger**”) in the City of Fredericton, Province of New Brunswick, which is affixed to property owned by the Purchaser and located at 397 Queen Street, Fredericton, New Brunswick; and

WHEREAS the Parties entered into the Municipal Agreement - NB Power Electric Vehicle on February 20, 2014 (the “**Participation Agreement**”) wherein, the Purchaser agreed (among other terms and conditions) to operate the EV Charger as part of the NB Power Electric Vehicle Demonstration Project (the “**Demonstration Project**”) on condition that NB Power collect and share the data collected from the EV Charger for up to 12 months, and further provided that the Vendor continue to maintain the EV Charger; and

WHEREAS the Demonstration Project terminated in 2015, yet the ownership and maintenance of the EV Charger remain with the Vendor and the operation and operational costs remain with the Purchaser, which costs the Participant is not able to offset unless it owns a qualified electric vehicle charging station meeting the requirements contained in NB Power’s Rates, Schedules and Policies Manual; and

WHEREAS the EV Charger owned by the Vendor meets the requirements contained in NB Power’s Rates, Schedules and Policies and Manual, and the Vendor is interested in transferring the ownership and maintenance costs of the

EV Charger to the Purchaser and the Purchaser is desirous of acquiring the ownership and maintenance costs associated the EV Charger in consideration of for the ability to offset some of its operation costs related to the EV Charger;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set out, and for valuable consideration as outlined in the recitals above, the receipt and sufficiency of which is hereby acknowledged by the Parties, it is agreed by and between the Parties as follows:

1. The Vendor agrees to convey to the Purchaser and the Purchaser agrees to acquire from the Vendor, all of the right title and interest in the Vendor's EV Charger, as described in Schedule "A" hereto (a copy of which is attached and forms part of this Agreement and referred to herein as the "**Asset**") on an "**AS IS WHERE IS**" basis.
2. This transaction of purchase and sale shall be completed on or before the 9th day of April, 2024 (the "**Closing Date**"), unless extended in writing by mutual agreement of the Parties.
3. On or before the Closing Date, the Vendor shall deliver a bill of sale absolute or an invoice for the Asset, in a form substantially similar to that attached as Schedule "B" hereto (a copy of which is attached and forms part of this Agreement).
4. Except to the extent otherwise set out herein, the Parties agree that after the Closing Date, the Purchaser shall retain sole responsibility for the Asset including but not limited to maintenance, upkeep, and replacement of the Asset.
5. The Vendor shall take and/or cause to be taken all proper steps and actions on its part to enable it to vest a good and marketable title in the Purchaser to the Asset purchased and sold free of all liens, charges and encumbrances. Title to the Asset hereby agreed to be purchased and sold shall be given to the Purchaser on the Closing Date.
6. It is agreed and declared that the Purchaser does not assume and shall not be liable for and the Vendor hereby agrees to indemnify and save harmless

the Purchaser from and against all obligations, commitments or liabilities of or claims against the Vendor whether arising out of or in any way connected with the Asset set out in Schedule "A" arising or of which the Vendor is aware prior to the Closing Date.

7. The Asset will be conveyed to the Purchaser without any representation or warranty whatsoever as to condition, quality, description, content, title, fitness for purpose or use. Responsibility for ascertaining these matters rests solely with the Purchaser. Except to the extent otherwise provided herein, the sale of the Asset will be entirely on an "as is, where is" basis.

8. The Vendor hereby represents and warrants to the Purchaser as follows and confirms that the Purchaser is relying upon the accuracy of each of such representation and warranty in connection with the purchase of the Asset:
 - a. The Vendor has good right full corporate power and absolute authority to enter into this Agreement and to sell, assign and transfer the Asset to the Purchaser in the manner contemplated herein. The Vendor has taken all necessary actions, steps and corporate proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement and transfer of the Asset by the Vendor to the Purchaser. This Agreement is a legal, valid and binding obligation, enforceable against the Vendor;

 - b. The Vendor is not under any obligation, contractual or otherwise, to request or obtain the consent of any person, and no permits, licenses, certifications, authorizations or approvals of or notification to, any federal, provincial, municipal or local government or governmental agency, board, commission or authority are required to be obtained by the Vendor;

 - c. That there is no action or proceeding, including but not limited to bankruptcy, which is now pending against the Vendor in any court, nor is there any attachment, judgment or other encumbrance which may now constitute a lien upon the Asset, nor are there any claims or pending claims against the Vendor which may be satisfied through a lien or attachment against the Asset. The costs of

satisfying any claims arising from events of which the Vendor is aware or which have occurred before the Closing Date shall be the responsibility of the Vendor;

- d. The Vendor has no knowledge of any action, cause of action, application, claim, investigation, prosecution or penalty being made or threatened against the Vendor relating to the Asset;
 - e. The Vendor has no knowledge of any material defects in the Asset;
 - f. The Vendor shall cause the Asset to be maintained in the same manner as its similar assets in the normal course of business until the Closing Date; and
 - g. that there are no product liability claims and liabilities for warranty or product return claims relating to the Asset prior to the Closing Date.
- 9.** Without limiting the generality of the foregoing, it is agreed that the Purchaser will have no liability for any of the following obligations or liabilities:
- a. all liabilities in respect of all indebtedness of the Vendor to all persons;
 - b. all product liability claims and liabilities for warranty or product return claims relating to the Asset prior to the Closing Date; and
 - c. all liabilities for all taxes, duties, levies, assessments and other such charges, including any penalties, interests and fines with respect thereto, payable by the Vendor to any federal, provincial, municipal or other government or governmental agency, authority, board, bureau or commission, domestic or foreign, including, without limitation, any taxes in respect of or measured by the sale, consumption or performance by the Vendor of the Asset prior to the Closing Date.
- 10.** The representations and warranties made by the Vendor and contained in this Agreement or contained in any document or certificate given in order to carry out the transaction contemplated hereby, shall survive the Closing

Date provided for herein and, notwithstanding such closing or any investigation made by or on behalf of the Purchaser or any other person or any knowledge of the Purchaser or any other person, shall continue in full force and effect for the benefit of the Purchaser.

11. It is mutually agreed by and between the Vendor and the Purchaser as follows:
 - a. that all press releases and public announcements prior to the Closing Date respecting the purchase and sale of the Asset will be jointly prepared and mutually agreed upon by the Vendor and the Purchaser;
 - b. the Parties will work jointly to minimize the costs; and
 - c. the Asset shall remain at the risk of the Vendor up to the time of transfer on the Closing Date.
12. Both Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.
13. No change or modification of this Agreement shall be valid unless it is in writing and signed by each Party.
14. It is intended that all provisions of this Agreement shall be fully binding and effective between the Parties but in the event that any particular provision or provisions or a part of one is found to be void, voidable or unenforceable for any reason whatsoever then the particular provision or provisions or part of the provision shall be deemed severed from the remainder of this Agreement and all remaining provisions shall remain in full force.
15. This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein.
16. This Agreement is not assignable by either Party without the prior written consent of the other Party, same not to be unreasonably withheld. Notwithstanding, the Vendor may assign this Agreement as part of any corporate reorganization it may undertake. Any attempt to assign any of the rights, duties or obligations of this Agreement, other than permitted by this

paragraph, is void. Subject to the restrictions on transfer, this Agreement shall enure to the benefit of and be binding upon the Parties and their respective all successors and permitted assigns.

17. Each Party is responsible for its respective costs associated with the completion of this transaction.
18. Any notice or demand (in each case, "**Notice**") to be given to any Party to this Agreement shall be in writing and shall be either personally delivered or sent by facsimile or electronic mail. Any Notice given shall be sent to the intended recipient at its address or facsimile number as follows:

In the case of Vendor:

NEW BRUNSWICK POWER CORPORATION
515 King Street
Fredericton, NB E3B 4X1
Attention: Chief Legal Officer
Fax: (506) 458-4319

In the case of the Purchaser:

THE CITY OF FREDERICTON
397 Queen Street
Fredericton, NB E3B 1B5
Attention: The City Clerk
Fax: (506)460-2905

Or to such other address or facsimile number, electronic mail address as either party may from time to time notify the other in accordance with this paragraph.

19. This Agreement, including any Schedules hereto, constitutes the entire Agreement between the Parties and supersedes all prior agreements, communications, understandings, negotiations and discussions, whether oral or written, express or implied, of the Parties with respect to the subject matter hereof. There are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement except as expressed herein. The Parties agree that in entering into this Agreement they have not relied upon any oral or written agreements, representations, warranties, promises, information, or understandings, express or implied,

not specifically set forth in this Agreement.

- 20.** The recitals are true and correct and form part of this Agreement.
- 21.** No condonation, forgiveness, waiver or forbearance by a Party of any non-observance or non-performance by the other Party of any of the terms or conditions of this Agreement shall operate as a waiver or estoppel by or against the first Party in respect of any term or condition or any subsequent non-observance or non-performance by the latter Party of any term or condition of this Agreement.
- 22.** Time shall be of the essence of this Agreement.
- 23.** Each Party agrees to execute and deliver such further instruments of conveyance, sale, assignment and transfer and take or cause to be taken such further action as the other Party shall reasonably request at any time in order to convey, vest, confirm or evidence in the Purchaser title to all or part of the Asset or to effectuate the terms, conditions and provisions of this Agreement.
- 24.** The obligations of the Parties under this Agreement which by their nature would continue beyond the termination or cancellation of this Agreement shall survive such termination or cancellation.
- 25.** This Agreement may be executed in several original or electronic counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be one and the same instrument. This Agreement may be executed by the Parties and transmitted by fax or other electronic means, and if so executed and transmitted this Agreement will be for all purposes as effective as if the Parties had executed and delivered an original Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of

) **THE CITY OF FREDERICTON**
)
)
)
) _____
) **Kate Rogers**
) **Mayor**
)
)
) _____
) **Jennifer Lawson**
) **City Clerk**
)
)
) **NEW BRUNSWICK POWER**
) **CORPORATION**
)
)
) _____
) **James Petrie**
) **Chief Legal Officer**
)
)
) _____
) **Nicole Poirier**
) **Vice President Operations**
)

SCHEDULE "A"


ASSET TO BE TRANSFERRED

**Description: NB Power Branded SmartTWO Level 2 EVSE
Station ID# NBA-017**



SCHEDULE "B"

INVOICE

 P.O. Box 2000 - C.P. 2000 Caraquet, NB E1W 1C1	<h2 style="margin: 0;">INVOICE / FACTURE</h2>	Form / Formulaire 0393 SCN / NCS 9681465V Rev / R�ev 00-11
PLEASE RETURN THIS PORTION WITH YOUR PAYMENT. VEUILLEZ REMETTRE CE T�ALON AVEC VOTRE PAIEMENT.	Contract Account No. No. de compte-contrat 330700-4	Invoice Date Date de la facture 2024/03/08
PLEASE REFERENCE YOUR CONTRACT ACCOUNT NUMBER WHEN MAKING PAYMENTS OR INQUIRIES. VEUILLEZ INDIQUER VOTRE NUM�RO DE COMPTE-CONTRAT SUR CHAQUE PAIEMENT OU QUESTION.	Invoice No. No. de facture 3307004-R	Amount Due Exigible \$ 1.15
NAME AND ADDRESS / NOM ET ADRESSE To A CITY OF FREDERICTON 397 QUEEN ST FREDERICTON NB E3B 1B5 ATTN : ALICIA KEATING		Amount Paid Montant pay�

 Name / Nom CITY OF FREDERICTON	Contract Account No. No. de compte-contrat 330700-4	Invoice Date / Date de facturation 2024/03/08 HST / TVH 11924 6924 Due Date Date d'�ch�ance 2024/04/09
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<i>Item</i>	<i>Description</i>	<i>Value</i>
<i>Article</i>	<i>Description</i>	<i>Valeur</i>

TO INVOICE FOR:

TRANSFER OF OWNERSHIP OF ADDENERGIE SMARTTWO CHARGER
 ID NBA-10189.

SUBTOTAL	\$ 1.00
TAX	<u>\$ 0.15</u>
TOTAL	\$ 1.15

THIS BILL IS PAYABLE UPON RECEIPT. A LATE PAYMENT CHARGE OF 1.50% PER MONTH (EFFECTIVE ANNUAL RATE 19.56% OR .04896% COMPOUND DAILY RATE) IS PAYABLE ON ANY UNPAID BALANCE AFTER THE DUE DATE. TO BE CALCULATED FROM THE BILL DUE DATE TO THE DATE OF RECEIPT OF PAYMENT.

LA PR SENTE FACTURE EST PAYABLE D S LA R CEPTION DES FRAIS DE PAIEMENT EN RETARD DE 1.50 % PAR MOIS (UN TAUX D'INT R T ANNUEL REEL DE 19.56 % OU UN TAUX D'INT R T COMPOS  DE 0.04896 % PAR JOUR) SONT AJOUT S   TOUT SOLDE IMPAY  APR S LA DATE D' CH ANCE. CETTE SOMME SERA CALCUL E DE LA DATE D' CH ANCE JUSQU'  LA DATE DE R CEPTION DU PAIEMENT.

KEEP THIS PORTION WITH YOUR RECORDS / GARDEZ CE RELEV  POUR VOS DOSSIERS

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. THAT I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. THAT the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. THAT the signature “Kate Rogers” subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. THAT the Mayor and City Clerk are officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
 City of Fredericton, in the County)
 of York and Province of New)
 Brunswick, this ____ day of March,)
 2024.)
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)
 _____)
 A Commissioner of Oaths)
 Being a Solicitor)

 Jennifer Lawson